MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON,** on February 9, 2005 at 3:45 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Alan Olson, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

	Informational Presentation on State Bonding--HB 388
Hearing & Date Posted:	None.
Executive Action:	HB 389

PRESENTATION ON BONDING

Mae Nan Ellingson, State Bond Counsel; Johnathan Heroux, State Financial Advisor; and **Mr. Steve Bender, Deputy Director of the Department of Administration,** gave a presentation on state bonding. **Mr. Heroux** participated by teleconference.

Ms. Ellingson provided an overview of revenue bonds, how they work, and how they compare to general obligation bonds. **Ms. Ellingson** commented that she has reviewed HB 388, and the only things authorized to be pledged by HB 388 are the revenues generated by the facilities that are being financed. **Ms. Ellingson** noted the bill does not obligate the state in any way to levy a tax or stand behind the bonds. The ability to sell the bonds in the market place will be totally dependent on the project being financed. **Ms. Ellingson** informed the Committee that for a bond issue of this size to be able to access purchasers from the capital markets, there needs to be a guaranteed stream of revenue for the length of time that the bonds are outstanding. Therefore, when a bond issue is done for a start up power project, there will need to be an exact fixed cost of the facility, as well as contractual obligations from users of the system which will ensure the bond holders at the rating agencies that the debt service will be paid. From the state's standpoint, the marketability of the bond will not be any different from a corporate bond or a bond financed solely on the basis of project revenues.

Ms. Ellingson commented the Montana Constitution states no debt of the state may be authorized without a two-thirds vote of the members of each house. **Ms. Ellingson** noted state debt can fall into four categories, and one of those categories is general obligation (GO), full-faith and credit debt. **Ms. Ellingson** stated Montana actually has very little GO debt and, therefore, enjoys a high rating. **Ms. Ellingson** identified GO debt as the most attractive and most secure debt. **Ms. Ellingson** spoke about severance tax bonds, which pledge the coal severance tax for payment of bonds. This bond is not as good as a GO bond since it is a limited obligation of the state. **Ms. Ellingson** noted HB 388 does not authorize the creation of state debt. **Ms. Ellingson** did not believe mere passage of HB 388 would affect the state's credit rating, since the state's credit is not being offered to secure the bonds.

Questions from the Committee:

REP. MARK NOENNIG, HD 46, BILLINGS, asked **Ms. Ellingson** to explain the other kind of state debt. **Ms. Ellingson** identified that debt as tax and revenue anticipation notes. **Ms. Ellingson** stated these bonds are secured by full faith and credit and consist of obligation to level out cash flow in the state. These do not count against debt level because the amount of the bond cannot exceed the amount appropriated for the fiscal year.

REP. NOENNIG asked if severance tax bonds also secured the severance funds, as well as the tax flow stream. **Ms. Ellingson** replied those funds are only secured by the annual flow coming in. **REP. NOENNING** noted HB 388 attempts to make the bonds tax exempt and asked **Ms. Ellingson** to address the issue. **Ms. Ellingson** explained the state cannot dictate whether bonds are tax exempt for federal income-tax purposes. Whether the bonds are tax exempt revolves around what the proceeds of the bonds are being use for, whether anyone besides the government is going to make a profit, and the source of repayment.

REP. WISEMAN recalled previous testimony from Mr. Buchanan that a default on the revenue bonds anticipated by HB 388 would affect the interest rates paid by all other state and local debt for a substantial period of time. **Ms. Ellingson** stated arguably it should not. **Ms. Ellingson** noted Montana has not had a lot of bond defaults. **Ms. Ellingson** suggested it may be necessary to purchase insurance in order to market the bonds effectively.

Mr. Heroux added that a review of Montana's credit rating would not reveal where another entity's default in Montana has impacted positively or negatively the specific issue that they were rating. **Mr. Heroux** added the state's general fund would not be held responsible to repay bonds if there were a problem. Traditionally, revenue bonds are issued with a debt-service reserve fund, which is an additional source of money set aside upon issuance. The reserve funds act as a cushion or backstop to help make up a shortfall.

REP. WISEMAN asked about the Washington Power supply system and how that default affected interest rates on public debt for years. **Mr. Heroux** could not answer the specifics to the question, and stated he would need to review what other debt was issued at that time and do a comparison to another state.

Ms. Ellingson stated in the Washington case, it was determined that the state and local governments had acted outside their constitutional or statutory authority by entering into long-term

contracts. **Ms. Ellingson** clarified the municipalities were the entities that were responsible for the bonds.
{Tape: 1; Side: A; Approx. Time Counter: 23.7 - 24.9}

REP. WISEMAN asked if a bond issue of this size or revenue bonds for a state-funded private enterprise would create a morale hazard in the marketplace. **Ms. Ellingson** identified a big gap between authorizing the issuance of bonds and actually getting to the point of issuing the bonds.

Mr. Heroux stated it is common to obtain a feasibility report by a utility expert who reviews the contracts and the rate structure. **Mr. Heroux** added the stronger the credit, the lower the borrowing costs, and the easier it is to repay the debt service.

REP. GEORGE GROESBECK, HD 74, BUTTE, expressed concern about building a plant without having the ability to get the power to market. **REP. GROESBECK** wanted to know what kind of financing was available for a company to build transmission and who would end up paying if the bonds were defaulted on. **Ms. Ellingson** replied if the purpose of HB 388 is to issue bonds for a facility that will be owned by a private company, there is probably not much benefit to the bond since it will not be tax exempt for federal purposes.

{Tape: 1; Side: B}

Ms. Ellingson stated there is no real benefit to acting as a conduit.

REP. GROESBECK wondered why private companies do not fund power generation themselves and expressed concern for Montana ratepayers and taxpayers. **Ms. Ellingson** reported there is nothing in the Montana Constitution that would preclude the state from backing bonds to enhance their credit worthiness. **Ms. Ellingson** submitted a proposed amendment to HB 388.

Todd Everts, Legislative Analyst, pointed out the first amendment on Exhibit 1 should refer to Page 6, line 26.
EXHIBIT(feh32a01)

Mr. Heroux presented the question that if Montana has all this coal waiting to be developed, why isn't the private sector looking at those development opportunities. **Mr. Heroux** suggested the general market place is saying there are other ways and other

current resources from other states where they can get power for less than having to fund transmission lines.

REP. NOENNIG recalled that public ownership that is leased to a private entity is tax exempt, and if there is a default, the governmental entity is not liable. **Ms. Ellingson** stated the tax exemption does not revolve around who owns the property, but rather that the governmental entity issued the debt for an authorized purpose that was tax exempt. **REP. NOENNIG** wondered about the exposure to the state in the case of foreclosure when the state has to pay the cost of the foreclosure and could possibly lose money on the resale of the assets. **Ms. Ellingson** noted many revenue bonds are not secured by an interest in the facility.

REP. WAITCHIES clarified the liability is assumed by the person or entity that buys the bonds. **Ms. Ellingson** explained the job of the state or the Board of Examiners would disclose to the purchaser the nature of the risk and the liability, then the purchaser of the bonds takes the risk.

Mr. Heroux supplied information regarding amortization on different bonds and the different ratings.

REP. JACOBSON spoke about the proposed transmission line being run from Alberta, Canada, to California, and the impact it would have on Montana's bond rating. **Ms. Ellingson** replied she did not believe it would affect Montana's bond rating.

REP. NOENNIG clarified the rates that he supplied were tax exempt rates and taxable rates would be 1.5% to 2% higher than the rates he quoted.

(REP. PARKER leaves.)

EXECUTIVE ACTION ON HB 389

Motion: REP. HIMMELBERGER moved that HB 389 DO PASS.

Motion: REP. OLSON moved that HB 389 BE AMENDED (HB038907.ATE). EXHIBIT(feh32a02)

Discussion:

Mr. Everts explained the proposed amendment is a compromise between Northwestern Energy (NWE) and the Public Service Commission (PSC). **Mr. Everts** reviewed HB038907.ate with the Committee.

{Tape: 2; Side: A}

Greg Jergeson, Commissioner, Montana Public Service Commission, replied the PSC voted unanimously to support the amendment with the disclosure that the revenue requirements language is a technical amendment.

John Fitzpatrick, Northwestern Energy, agreed the amendment is a compromise and clarified the revenue requirements language came at the request of the Director of Regulatory Affairs, who wanted the language in there. **Mr. Fitzpatrick** explained "revenue requirement" is a term-of-art within the notion of a cost-of-service ratebased facility, and the term "cost" is normally a contractual cost, and he wanted to make the distinction.

REP. WISEMAN stated his concerns about protecting ratepayers.

REP. NOENNIG expressed concerns about proposed amendment Nos. 5 and 15. **REP. WISEMAN** explained that the amendment would require advanced approval, so the default supplier would not be making a large investment without having a guarantee of approval.

Vote: Motion TO ADOPT HB038907.ATE carried unanimously, with REP. PARKER voting by proxy.

Motion: REP. OLSON moved that HB 389 BE AMENDED (HB038901.ATE). EXHIBIT(feh32a03)

Discussion:

CHAIRMAN OLSON reviewed the proposed amendment with the Committee stating the PSC cannot come in after the fact and say you should have built a power plant because it would have been cheaper. **CHAIRMAN OLSON** noted that the PSC faulted NWE for not buying gas prudently, and NWE was disallowed recovery of costs.

REP. WISEMAN asked whether NWE could refuse a deal even though the PSC believed it would be in the best interest of NWE and the ratepayers. **CHAIRMAN OLSON** noted that statutorily, it is NWE's responsibility to come up with a portfolio for approval by the PSC, and it is up to the PSC to approve or deny the portfolio.

REP. NOENNIG's concern was if the default supplier does build or invest in its own facility, if the language would prohibit penalizing the default supplier if they could not partner with another potential producer. **REP. NOENNIG** suggested the PSC

should be able to tell the default supplier that they cannot engage in conflict of interest compiling of a portfolio.

Commissioner Jergeson replied the PSC had not formally taken a position on the issue.

REP. NOENNIG asked if the PSC had determined whether the language would have an effect on the PSC's ability to scrutinize a potential supplier for the portfolio that was not the default supplier in instances where there was a proposed relationship with the default supplier. **Commissioner Jergeson** noted the other amendment requires the PSC to analyze the proposal from the applicant and how it relates to the other possible power supplies.
{Tape: 2; Side: A; Approx. Time Counter: 8.5 - 17.9; Comments: Questioning by REP. NOENNIG and REP. JACOBSON.}

REP. GALLIK had concerns about Amendment 4, and stated he did not believe the Committee would want to limit and not require the default supplier to conduct an efficient default supply resource planning and procurement process unless they are building out generation. **REP. GALLIK** suggested NWE would probably not consider building out generation for another ten years.

CHAIRMAN OLSON noted the question is whether NWE can be forced to build a plant to put into the portfolio. **REP. GALLIK** agreed, but suggested that is exactly what the amendment would do.

REP. WAITCHIES wanted a definition for "default supply resource" and asked whether the definition would include a power plant. **Mr. Everts** responded that a "default supply resource" could be a power plant. **REP. WAITCHIES** noted the process would only need to be conducted if the power plant was built. **REP. GALLIK** suggested this is a requirement under existing law and is part of the efficient resource planning and procurement process.

REP. STAHL referred the Committee to § 69-8-210 and asked about the use of "prudently" in that section.

Mr. Fitzpatrick explained the purpose of the amendment is to do the opposite of what is being suggested by REP. GALLIK. **Mr. Fitzpatrick** explained that NWE has an obligation to conduct an efficient default supply resource planning and procurement process that evaluates a full-range of costs for effective electric supply and demand site management options, including the use of generation by the default supplier. **Mr. Fitzpatrick** pointed out the purpose of the second amendment is to say that if you bring in a portfolio of contracts and do not choose to bring

in a build or lease option, then you do not have bring in an evaluation of build and lease. Therefore, if NWE did not feel the market was right for building, they would not be obligated to bring in that analysis. NWE will only be required to bring in that analysis when it determines that it has a viable project.

REP. GALLIK reiterated that he understands the intent, but again stated he did not believe Amendment 4 accomplishes that intent.

REP. WAITCHIES' viewpoint was opposite of REP. GALLIK's viewpoint, and he stated it would only be necessary to provide an efficient planning process if you were going to build a power plant. **REP. GALLIK** suggested the Committee would have to look at the context of the entire statute.

CHAIRMAN OLSON suggested removing the first comma on the language he is proposing to insert on Page 8, Line 15, following "supplier." **CHAIRMAN OLSON** suggested this modification would address REP. GALLIK's concerns.

{Tape: 2; Side: B}

REP. GALLIK clarified the legislative intent is that the amendment only apply to the circumstance in subsection(a) and not to the requirement for the efficient resource planning and procurement process that was in current law.

REP. GALLIK expressed his concerns with Amendment 2 and the words "Irrespective of the avoided cost," and suggested there should be a definition of "avoided cost."

Mr. Fitzpatrick explained the intention is to say that there are certain costs that might have otherwise been incurred, and the amendment says a company will not be penalized for those costs if it chooses not to exercise the build option.

REP. NOENNIG suggested the phrase "irrespective of the avoided cost," was not needed at the beginning of proposed Amendment 2.

Tom Schneider, Public Service Commission, thought striking "irrespective of the avoided cost" would help. **Commissioner Schneider** explained his concern is with a company deciding to back out of a project that has already received preapproval from the PSC. **Commissioner Schneider** suggested this could leave customers hanging, and the PSC would not have any recourse even though the decision to back out could jeopardize the default supply.

REP. GALLIK wondered if in the event a company does go forward and then backs out, whether the default supplier would be penalized since there has already been preapproval and the costs have already been placed into the ratebase.

REP. NOENNIG asked if the issue could be addressed in the preapproval process.

Commissioner Schneider addressed the issue and stated the utility would need to have due diligence and penalties in the contract regarding default. The PSC would need to go to the market to replace the power.

CHAIRMAN OLSON disagreed with the concerns expressed by REP. GALLIK and REP. NOENNIG about what would happen if a company had already been through the preapproval process and decided to back out.

Vote: Motion to adopt HB038901.ate and striking the language "irrespective of avoided costs" failed 5-9 by roll call vote with REP. KLOCK, REP. OLSON, REP. RICE, REP. STAHL, and REP. WAITSCHIES voting aye, and REP. PARKER voting no by proxy.

Motion/Vote: REP. OLSON moved that HB 389 BE TABLED. Motion carried 9-5 by roll call vote with REP. GALLIK, REP. GROESBECK, REP. HAMILTON, REP. JACOBSON, and REP. WISEMAN voting no, and REP. PARKER voting aye by proxy.

ADJOURNMENT

Adjournment: 5:38 P.M.

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REP. ALAN OLSON, Chairman

_____
CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT(feh32aad0.PDF)